

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY E. WALKER,

Plaintiff,

v.

DR. MINA BESHARA; DAVID ROBLES, FNU LUU; AUDRA KING; JOSH BERGER; REBECCA KORNBLUSH; DAVID AVILA; ED FERNANDEZ,

Defendants.

Case No. 1:20-cv-01050-NONE-HBK (PC)

FINDINGS AND RECOMMENDATIONS TO DENY PLAINTIFF'S MOTIONS FOR A TEMPORARY RESTRAINING ORDER

(Doc. Nos. 29, 30, 31)

FOURTEEN-DAY OBJECTION PERIOD

Plaintiff Jeffery E. Walker initiated this action as a civil detainee at Coalinga State Hospital and is proceeding *pro se* on his First Amended Complaint filed on June 9, 2021 pursuant to 42 U.S.C. § 1983.<sup>1</sup> (Doc. Nos. 26, 34). Pending before the Court are Plaintiff's following motions: motion for order to show cause for a temporary restraining order, attaching as an exhibit a copy of the Section-Vocational Services Operating Manual for Coalinga (Doc. No. 29), motion for a temporary restraining order (Doc. No. 30), and motion for injunction and for temporary restraining order (Doc. No. 31). Based on the November 8, 2021 notice of change of address, Plaintiff is no longer confined at Coalinga State Hospital but has been transferred to the San

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<sup>1</sup> As directed in the Court's initial screening order entered May 27, 2021, Plaintiff filed a FAC. (Doc. No. 26). A screening order on the FAC will be issued in due course.

1 Francisco County Jail. (Doc. No. 38).

2 For the reasons discussed below, primarily that the Court lacks personal jurisdiction over  
3 the defendants, Plaintiff's motions seek relief from conditions of confinement at Coalinga and  
4 Plaintiff has been transferred from Coalinga to the San Francisco County Jail, and there is no  
5 nexus between relief sought in the motions and the claims raised in the operative First Amended  
6 Complaint, the undersigned recommends the district court deny Plaintiff's motions for a  
7 preliminary injunction or temporary restraining order.

8 **I. BACKGROUND**

9 **A. First Amended Complaint**

10 On May 27, 2021 the Court issued a screening order under § 1915(e)(2)(b)(ii) and  
11 attached the § 1983 complaint form for Plaintiff to utilize to amend his complaint. (Doc. No. 21).  
12 At screening, the court noted that the incidents giving rise to the case appeared to stem from  
13 Plaintiff being forcefully medicated, when Defendants instead could have housed Plaintiff in a  
14 single cell, and from being placed under 1:1 observation, necessitating male officers to directly  
15 observe him around-the-clock. (*Id.* at 4) (citing Doc. No. 1 at 5-7, 10, 17) (alleging Plaintiff  
16 could not get any sleep with male staff observing him). Plaintiff claims he suffers post-traumatic  
17 stress disorder from a previous sexual assault that occurred in prison which "triggers" him  
18 whenever male staff is watching him, or when he sees Hispanic residents or staff, or gay staff,  
19 and causes him to experience anxiety attacks, chest pains, paranoia and results in him being  
20 administrated psychotropic drugs against his will or taken to outside hospitals for examinations.  
21 (*Id.* at 5) (citing Doc. No. 1 at 7, 15). Because the Complaint did not comply with Federal Rule  
22 of Civil Procedure 8 and appeared to raise unrelated claims, the Court directed Plaintiff to file an  
23 amended complaint following the rules and noting that unrelated claims must be raised in  
24 different actions. (*Id.* at 7).

25 On May 27, 2021, the undersigned also issued a Findings and Recommendations  
26 recommending the district court deny Plaintiff's prior motions for temporary restraining orders or  
27 preliminary injunctions. (Doc. Nos. 21, 23) (denying Plaintiff's motions for temporary  
28 restraining orders at Doc. Nos. 11, 12, 18). The district court adopted the Findings and

1 Recommendations in full on September 22, 2021. (Doc. No. 35).

2 In the interim, Plaintiff filed his First Amended Complaint (“FAC”) on June 9, 2021,  
3 consisting of 28 pages. (Doc. No. 26). The FAC, which is the operative pleading, alleges  
4 Plaintiff is in “imminent danger.” (*Id.* at 1). The FAC identifies three claims for relief. The first  
5 claim relates to Plaintiff receiving forced psychotropic medication instead of being housing in a  
6 single cell. (*Id.* at 5-19). The second claim relates to an incident where Plaintiff alleges Coalinga  
7 staff used excessive force on him, including use of five-point restraints, instead of providing the  
8 type of psychiatric care Plaintiff preferred and he claims he needed while he was experiencing a  
9 mental crisis. (*Id.* at 20-24). The third claim alleges retaliation by various staff members because  
10 Plaintiff has had successful lawsuits. (*Id.* at 25-27). As relief Plaintiff seeks monetary damages.  
11 (*Id.* at 28).

12 **B. Plaintiff’s Instant Motions**

13 All three of the motions were filed quickly in succession. Plaintiff’s first and second  
14 motions for a temporary restraining order were filed simultaneously on June 21, 2021. (Doc.  
15 Nos. 29, 30). Plaintiff’s first motion titled “motion for order to show cause” is directed at Christi  
16 Beeler, a staff person at Coalinga State Hospital who is not named as a defendant and who  
17 Plaintiff states tried to have him fired from his job as an “IT worker janitor.” (*See generally* Doc.  
18 No. 29 at 2-55). More specifically, Plaintiff states Beeler is attempting to enforce an “outdated”  
19 policy that permitted detainees to hold a position for only two years. (*Id.* at 5). Plaintiff attaches  
20 Coalinga State Hospital’s operating manual on vocational services to his motion. (*Id.* at 12-18).

21 Plaintiff’s second motion is styled for the superior court in the county and city of Fresno  
22 but contains similar allegations to the first motion regarding Plaintiff’s concern that he might lose  
23 his IT job. (Doc. No. 30 at 1-11). Like his first motion, the second motion contains the Coalinga  
24 State Hospital’s operating manual on vocation services (*id.* at 12-18), but also includes an April  
25 23, 2021 response to a different Coalinga resident’s grievance concerning job re-assignment after  
26 holding the position for two years, (*id.* at 20), resident grievances concerning the same matter (*id.*  
27 at 21-24), and copies of Plaintiff’s pleadings in other cases or orders from other courts, including,  
28 but not limited to a motion from case number 1:16-cv-1417-JLT, identifying Kristi Wheeler as a

1 defendant, a first amended complaint in case number 1:21-cv-740-EPG naming Brian Cates as a  
 2 defendant, and a copy of a decision and order concerning a public censure against a superior court  
 3 judge (*id.* at 25-77).

4 Plaintiff's third motion for a temporary restraining order, although not the model of  
 5 clarity, also pertains to the IT job loss. (Doc. No. 31). Plaintiff attaches to that motion emails  
 6 from attorney Erwin Fredrich, who appears to represent Plaintiff in his underlying civil  
 7 commitment proceedings but contacted Coalinga officials "as a courtesy" about Plaintiff's "IT  
 8 job status." (*Id.* at 8).

## 9 II. APPLICABLE LAW

10 Federal Rule of Civil Procedure 65 governs injunctions and restraining orders, and  
 11 requires that a motion for temporary restraining order include "specific facts in an affidavit or a  
 12 verified complaint [that] clearly show that immediate, and irreparable injury, loss, or damage will  
 13 result to the movant before the adverse party can be heard in opposition," as well as written  
 14 certification from the movant's attorney stating "any efforts made to give notice and the reasons  
 15 why it should not be required." Fed. R. Civ. P. 65(b).

16 Temporary restraining orders are governed by the same standard applicable to preliminary  
 17 injunctions, with the exception that preliminary injunctions require notice to the adverse party.  
 18 *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F.Supp.2d 1111, 1126  
 19 (E.D. Ca. 2001); *see also* Fed. R. Civ. P. 65(a). Eastern District of California Local Rule 231,  
 20 however, requires notice for temporary restraining orders as well, "[e]xcept in the most  
 21 extraordinary of circumstances," and the court considers whether the applicant could have sought  
 22 relief by motion for preliminary injunction at an earlier date. Local Rule 231(a)-(b) (E.D. Cal.  
 23 2019). A temporary restraining order "should be restricted to serving [its] underlying purpose of  
 24 preserving the status quo and preventing irreparable harm just so long as is necessary to hold a  
 25 hearing, and no longer." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers*  
 26 *Local No. 70*, 415 U.S. 423, 439 (1974).

27 A temporary restraining order is "an extraordinary remedy" and may be issued only if  
 28 Plaintiff establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in

1 the absence of preliminary relief; (3) that the balance of equities tips in his/her favor; (4) that an  
2 injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).  
3 Plaintiff bears the burden of clearly satisfying all four prongs. *Alliance for the Wild Rockies v.*  
4 *Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). A TRO will not issue if Plaintiff merely shows  
5 irreparable harm is possible – a showing of likelihood is required. *Id.* at 1131. The Ninth Circuit  
6 also has a second test, holding that a party requesting relief is entitled to a preliminary injunction  
7 if it demonstrates: (1) a combination of probable success on the merits and the possibility of  
8 irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply  
9 in its favor. *Zepeda v. U.S. Immigr. & Naturalization Serv.*, 753 F.2d 719, 727 (9th Cir. 1985);  
10 *see also McKinney v. Hill*, 925 F.2d at 1470 (9th Cir. 1991) (noting same).

11 Significant, and applicable here, is that a federal court does not have personal jurisdiction  
12 over the parties and subject matter jurisdiction over the claim if no defendant has been served in  
13 the action. *Zepeda*, 753 F.2d at 727 (9th Cir. 1985) (if no defendant has been served with process  
14 then injunctive relief is premature).

15 The injunctive relief an applicant requests must relate to the claims brought in the  
16 complaint. *See Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 633 (9th Cir.  
17 2015) (“When a plaintiff seeks injunctive relief based on claims not pled in the complaint, the  
18 court does not have the authority to issue an injunction.”). Absent a nexus between the injury  
19 claimed in the motion and the underlying complaint, the court lacks the authority to grant Plaintiff  
20 any relief. *Id.* at 636.

### 21 III. DISCUSSION

22 Having reviewed Plaintiff’s three-related motions, the undersigned does not find Plaintiff  
23 has satisfied his burden to warrant issuance of this extraordinary remedy. As a threshold matter,  
24 Plaintiff has not complied with Local Rule 231(d). There is no showing of actual or attempted  
25 notice, and other than requesting the relief, Plaintiff fails to provide any briefing, other than  
26 conclusory statements, on the implicated legal issues. Nor does Plaintiff provide any affidavits  
27 attesting to imminent irreparable harm or include a proposed order that includes a provision for  
28 bond.

1       Further, the Court does not have personal jurisdiction or subject matter jurisdiction over  
2 Defendants, because Defendants have not received service of process. *See Zepeda v. U.S.*  
3 *Immigr. & Naturalization Serv.*, 753 F.2d 719, 727 (9th Cir. 1985) (“A federal court may issue an  
4 injunction if it has personal jurisdiction over the parties and subject matter jurisdiction over the  
5 claim; it may not attempt to determine the rights of persons not before the court.”). The FAC  
6 remains subject to the screening provisions of § 1915A. Additionally, as noted above, Plaintiff  
7 was transferred to the San Francisco County Jail. (*Supra* at 1-2) (citing Doc. No. 38). Because  
8 the relief Plaintiff seeks stems from incidents arising at Coalinga State Hospital, his transfer to the  
9 county jail arguably moots his motions. *See Lear v. Manasrah*, 2017 WL 781499 \* (E.D. Cal.  
10 Feb. 28, 2017) (absent facts suggesting a plaintiff will be transferred back to defendant’s custody,  
11 the plaintiff’s requests for injunctive relief are moot); *James v. Scribner*, 2006 WL 903576 \*1  
12 (E.D. Cal. April 6, 2006) (citations omitted) (finding plaintiff’s motion for preliminary injunction  
13 moot based on his transfer because inmate was no longer subjected to challenged conditions).  
14 Finally, the FAC raises three claims, and none of the claims pertain to Plaintiff’s job loss at issue,  
15 which is the subject of the three-related motions. And the motions are directed at an individual  
16 not named as a defendant in the FAC. Because there is no nexus because the injury complained  
17 of in the FAC and the instant motions, the Court cannot grant relief. *Pac. Radiation Oncology,*  
18 *LLC*, 810 F.3d at 633.

19        In summary, the undersigned finds this is not an extraordinary circumstance warranting  
20 the issuance of a temporary restraining order, or preliminary injunction, and recommends for all  
21 the reasons set forth above that the district court deny Plaintiff's motions for a temporary  
22 restraining order.

23 || Accordingly, it is **RECOMMENDED**:

24 Plaintiff's motions for a temporary restraining order or a preliminary injunction (Doc.  
25 Nos. 29, 30, 31) be DENIED.

## NOTICE TO PARTIES

27 These findings and recommendations will be submitted to the United States district judge  
28 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen

1 (14) days after being served with these findings and recommendations, a party may file written  
2 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
3 Findings and Recommendations." Parties are advised that failure to file objections within the  
4 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,  
5 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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Dated: December 10, 2021

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HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE